US
12750
57.15
O

REASONS

FOR

CONCLUDING THAT THE ACT OF 1711,

REVERSING THE ATTAINDERS OF

THE PERSONS CONVICTED OF WITCHCRAFT IN MASSACHUSETTS

IN THE YEAR 1692,

Library of Harvard College

With the Compliments
of the Author.

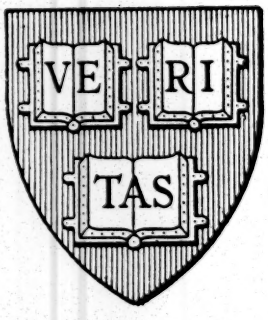
Salem, July 25 *188 4*

Historical Society.

CAMBRIDGE:
JOHN WILSON AND SON.
University Press.
1884.

1-5

US 12750.57.15



HARVARD
COLLEGE
LIBRARY

HARVARD COLLEGE LIBRARY

Case
F

REASONS

FOR

CONCLUDING THAT THE ACT OF 1711,

REVERSING THE ATTAINDERS OF

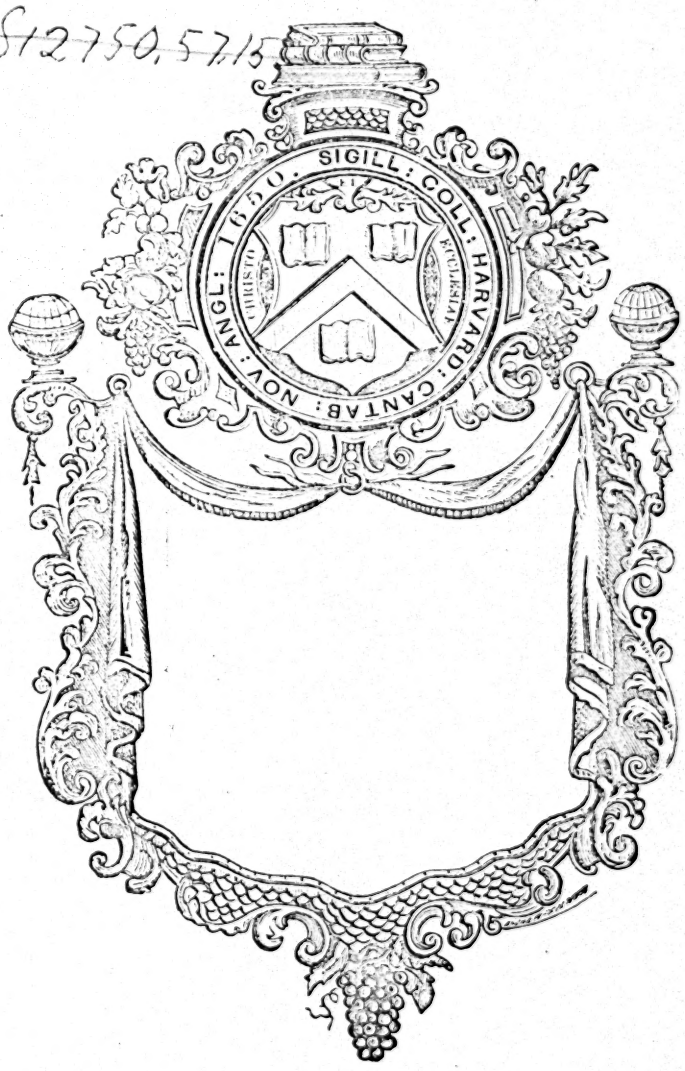
THE PERSONS CONVICTED OF WITCHCRAFT IN MASSACHUSETTS

IN THE YEAR 1692,

BECAME A LAW.

[200 copies printed.]

US12750.57.15



REASONS

FOR

CONCLUDING THAT THE ACT OF 1711,

REVERSING THE ATTAINDERS OF

THE PERSONS CONVICTED OF WITCHCRAFT IN MASSACHUSETTS

IN THE YEAR 1692,

BECAME A LAW.

BEING A REPLY TO

SUPPLEMENTARY NOTES, ETC., BY GEORGE H. MOORE, LL.D.

BY ABNER CHENEY GOODELL, JR.

REPRINTED FROM THE PROCEEDINGS OF THE MASSACHUSETTS HISTORICAL SOCIETY.

CAMBRIDGE:
JOHN WILSON AND SON.
University Press.
1884.

~~10324.12~~
~~US12750.57.15~~
1884 July 26,
Gift of
The Author

WITCHCRAFT IN MASSACHUSETTS.

At a meeting of the Massachusetts Historical Society, held March 13, 1884, in reply to a communication presented by Dr. George H. Moore, of New York, Mr. A. C. Goodell, Jr., made the following remarks:—

As might have been expected, our learned and ingenious associate has given us all that can be shown or surmised in support of his original proposition, that the act of 1711 never became a law; and yet it seems to me that, fairly weighed against what has been shown on the other side, his arguments do not preponderate.

Admiration of the skill with which he hurled some of his shafts, to say nothing of a sense of peril, quite distracted my attention from some other of his points, made with equal felicity of expression. In short, I feel overborne by the torrent of eloquence to which we have listened, and am conscious of inability to rally, for the moment, so as to do justice to him or myself.

But let us glance at the issue as it stands. To remove a doubt never entertained until Dr. Moore denied the existence of the act in question, but which, starting from such a source, merits the most careful consideration, I have shown, first, from the journals of the Governor and Council, commonly called the "General Court Records," an entry of the passage of the bill in question, to be enacted; second, I have referred to a contemporaneous copy, in the handwriting of the Secretary of the Province, filed in the office of the Clerk of the Courts, at Salem, where it has remained since 1711; third, I have called attention to three contemporaneous references to this act, by

different parties interested;[1] and, fourth, I have produced, as the final test, a copy of the act, printed on a single leaf in the year 1713, — which copy, it is admitted, bears on its face conclusive evidence of having been impressed from the types of Bartholomew Green, then printer to the Governor and Council.

Now, to invalidate the last of these concurrent evidences, which taken together impress me as decisive, my friend, here, asks you to believe that the act, of which we have a heliotype in our Proceedings, was surreptitiously printed. He does not suggest the motive, nor indicate with certainty the possible author of this deed. Perhaps he would have us believe that it was done by the printer's devil, to mark the end of an invidious rivalry with the recently dethroned Prince of Darkness, and to celebrate the absoluteness of his own less vindictive, though not always less provoking sway. However, I do not intend to carry my criticism beyond the sure support of incontrovertible facts. I am even willing to admit that I cannot conceive how the critical reasons for questioning the authenticity of the printed copy could be more ably or thoroughly presented than they have been in the paper just read; and yet I feel confident they do not in your minds overcome the strong presumption arising from the mutually corroborating circumstances which attest the genuineness of this copy, and from the absence of any conceivable motive for perpetrating the high-handed forgery which the alleged clandestine operations with Bartholomew Green's types would imply.

I will not then attempt to follow the critical argument in detail, but content myself with calling your attention to a fact which, if clearly borne in mind, may serve to lessen the rigor

[1] Dr. Moore infers (Proc. Mass. Hist. Soc., vol. xxi. p. 88), that, because in two of these instances the petitioners pray that certain names may be "inserted in the act," the act had not been actually passed. But this is hardly a necessary inference, since the act and an act in addition thereto would, by legal construction, constitute but one act; and therefore it is not difficult to conceive that the "advisers" of the petitioners may have seen no impropriety in suggesting such "modification of, or addition to, a statute which was already a law of the land." Again, both of the petitioners describe the act either as "the late act," or "the act lately made;" and one of them expressly prays that application may be made, "*at the next session*" of the General Court, to have her name inserted. Now what is the purpose of an act *in addition*, etc., but to make "modifications of, or additions to," some statute already enacted? And is there any rule limiting the operation of such an act so as to exclude the insertion of additional names?

of the rules by which the argument should be conducted. It is not pretended that the printed act was one of a series of acts published by *authority;* but, on the contrary, it is assumed to have been printed, a year or two after its passage, probably to meet the demands of persons interested, who could not be so conveniently and cheaply supplied with manuscript copies.

Although bills of attainder after the Revolution of 1688 were considered public acts,—notwithstanding they had ceased to be of the nature of conclusive judgments, as formerly, but were in terms conditional and in their operation dependent upon some future act of the accused or some prospective judicial proceeding against him, — bills to reverse or set aside attainders were classed with private acts, both in Old and New England.[1]

Nothing, therefore, against the existence of such an act should be inferred from the fact that it does not appear in the first volume of the new edition of the Province Laws, since, according to the arrangement announced by the editors in their preface,[2] it properly belongs in the appendix, with other private acts, including the similar act of 1703. The title of this act does not, indeed, appear in the list of titles of private acts in that volume, and for the reasons I have heretofore given;[3] but upon Mr. Sainsbury's discovery of printed copies of the missing public acts of the same year, respecting which, in the matter of the Governor's assent, the record was similarly defective, it was immediately put in the list of titles of private acts reserved for the appendix, although it was too late to make the proper change in the printed volume. This was done in the hope that before the appendix should be printed, the certainty of the act's having been passed would be established; which happened, to the satisfaction of the editors, when the printed copy in question, exactly corresponding with the manuscript copy at Salem, came to their knowledge.

The fact that it was a private act should also cause us to treat with distrust any arguments against its genuineness founded upon discrepancies, in formal and typographical

[1] This was the case with the bills annulling the attainders of Lord Russell, Algernon Sidney, and Lady Alice Lisle (1 W. & M., 1st sess.); and with the provincial act, referred to by Dr. Moore, reversing the attainder of Abigail Faulkner and others, passed in 1703.

[2] Page xxviii.

[3] Proc. Mass. Hist. Soc., vol. xx. p. 290.

details, between this copy and the public acts printed in the regular series. There being no absolute or customary standard for private as well as for public acts, all those departures from uniformity which have been disclosed by the expert scrutiny of Dr. Moore are not shown to be less compatible with honesty on the part of the person or persons who printed or procured the printing of this copy, than is the absence of page-numbers, or than would be the presence of any peculiarity in the signature, paper, or press-work.

The same circumstance, moreover, weakens the force of another objection which Dr. Moore appears to think, if not insuperable, at least formidable; and that is, that the act in question does not appear to have been laid before the ministers of the crown. Private acts, not being regularly printed, often failed, possibly sometimes on that account, to reach the Privy Council. This is evident from the demands occasionally made for exemplifications of such acts, upon the Governor or the Secretary of the Province, by the Lords of Trade or from the Council Board. Hence less importance should be attached to the failure to discover the mention of any particular private act in the Public Record Office. Besides, to insist on the importance of such a defect is to apply a rule which will equally unsettle the authenticity of several public acts. For instance, since no list of the acts of 1711 has been found in the British archives,—if, indeed, any such list was actually transmitted,—the proof of the passage of three of the public acts of that year must rest upon the existence of a printed copy or copies; for this, meagre as it may seem, is all the evidence that we have of the fact that these acts really passed the Province seal. Now, if this evidence is inadmissible, the acts must fall; there being no record showing that the Governor assented to them, and neither the original bill nor the engrossment of either having been preserved.

Yet Dr. Moore says these "are known to have been printed contemporaneously, in due course, and by regular official authority." He fails, however, to add that this knowledge is derived from precisely the same kind of evidence upon which I claim to found my knowledge of the passage of the act to reverse the attainders. And while he informs us that two of these acts are in the supplements of the edition of 1699, he modestly refrains from telling us that only one perfect collec-

tion of these supplements exists, which he, its fortunate possessor, esteems an adequate reward for the expense of time and money, and for the great learning and ingenuity with which for many years his bibliographical researches for its completion were conducted.

Surely our friend's comparison of the "status" of the act for reversing the attainders with that of other acts — for instance, the act for enforcing the order of June 12, 1711 — should have been extended beyond the bare declaration, in five words, with which he disposes of the former. The category of each is identical; and if one is to be summarily "relegated to the limbo of imperfect legislation," he should show with all possible cogency of reasoning and fulness of illustration sufficient grounds for exempting the public act from the same fate. The difficulty of the task should rather have induced than excused the attempt; for we cannot be presumed to know what circumstance in favor of the public act overbalances, in his mind, the cumulative evidence afforded by the presence, legitimately, in a public office, of a contemporaneous copy of the private act in the handwriting of the Secretary of the Province and by him indorsed "Copy," and minuted "examined," while not a scrap is referred to indicating that the public act was ever officially recognized.

I shall say something more on this head presently, after I have considered the objections which Dr. Moore discovers on the face of the printed act.

I am content to allow his criticisms upon the "style and method and literary treatment" of the act to pass for what they are worth, with the single observation, which I think he will approve, that of all literature in the world statute-books of the early part of the last century are the least likely to afford specimens of elegant diction, and that the frequent occurrence of acts to amend and explain those early statutes sufficiently attests the crudeness of the efforts of the average law-maker of that day, both in Old or New England, to frame his bills so as to express his intentions with ordinary certainty.

Therefore, after remarking, in order to show its slight significance, that the omission of the Christian name of Goodwife Corey was a piece of carelessness which, though unusual, can be capped by grosser instances even in the public acts of a

much later day,[1] I proceed to examine the more important internal evidence which Dr. Moore points out as tending to prove the spuriousness of the act.

And, first, of the improbability of the passage of this act by the General Court, because the subject-matter belonged exclusively to the cognizance of Parliament. If Dr. Moore's views respecting the exclusive authority of Parliament to pass bills reversing attainders were well grounded — which I do not admit — he himself furnishes me with a conclusive answer in the present case, where he says: "Of course the fact that the General Court of Massachusetts had no right to pass such an act is no evidence that they refrained from the attempt," — an opinion admirably sustained by their passing, eight years before, the act to reverse the attainders of Abigail Faulkner and others, which our friend has printed, at length, in the appendix to his Notes on the History of Witchcraft, etc. It is therefore unnecessary to discuss the constitutionality of the act, which, by the way, was not questioned by the Solicitor-General of England when the act of 1703 was laid before him by command of the Lords of Trade, — a proceeding which Dr. Moore too hastily assumes could not have happened.

Nor need we inquire what differences in the organic law of the respective provinces of New York and Massachusetts Bay, or in the political ideas which prevailed in those provinces, or what dissimilarity in the special circumstances of any given case, may at any time have induced the legislatures of the two provinces to differ in their action. But it may be observed that in both provinces at that time the supremacy of Parliament was generally recognized. Its power, if not its right, to meddle, temporarily at least, with the internal affairs of either province, and even to disregard the qualified autonomy granted by the charter of Massachusetts, was not denied except by a very small party, constituting, however, the germ which slowly expanded into that resistless band of patriots which succeeded to power and glory in the Revolution. Nor should I omit to say that Dudley's change of opinion between the time of his signing the act of 1703 and the culmination of the movement for redressing the grievances of 1692 is not to be taken for granted.

[1] For instance, Prov. Laws, 1757–58, chap. 15; 1760–61, chap. 7; and 1768, chap. 16, § 1.

Dr. Moore discovers another badge of spuriousness in the declaration, in the preamble of the act, that the survivors were "lying still under the like Sentence of the said Court and liable to have the same Executed upon them," which, he says, is false, inasmuch as the survivors had all been pardoned. Of course he does not mean to have us understand that the preamble expressly puts *all* the survivors in this category by the word "others," which, as the context shows, may have been intended to embrace only a few of the persons convicted and sentenced, — that is, "attainted."

But how many pardons were actually granted? and where is the record evidence? When were the charters of pardon pleaded? or in what manner were they communicated after sentence? Has my friend any other evidence that pardons were granted than the declarations of Mather and Calef, and the representations of some of the petitioners for redress? If he has, he ought to have adduced it to support his charge of falsehood. If he has not, we are bound to challenge the correctness of the inference he would force upon us, that all the survivors were pardoned.

Of the witnesses I have referred to, Calef alone implies that all the surviving convicts were pardoned; but the unsupported testimony of all of them would be entirely insufficient to prove that Governor Phips violated his instructions, and set an example which was never followed by his successors.

The pardon of felonies was a prerogative of the crown, which could only be delegated by express language; and if pardons were granted by the Governor without such authority, the act was *ultra vires*. The authority has not been shown here; nor is it to be presumed, for, although the provincial governors were usually authorized to grant pardons in all cases except treason and wilful murder, the authority could not be lawfully exercised in this province without special permission, in any case where the effect of the pardon would be to remit a forfeiture of more than £10 in value.[1] Hutchinson, who understood the law relating to this branch of the prerogative, does not pretend that Phips pardoned any of the condemned. His words are: "Those the governor reprieved,

[1] See Proc. Mass. Hist. Soc., vol. xx. p. 148, and note.

for the King's mercy."[1] Undoubtedly, as Hutchinson says, the three persons[2] convicted at the January term of the Superior Court of Judicature at Salem were reprieved; and some of the accused perhaps were pardoned, after a reprieve, by royal charter or mandate, as appears to have been the case with Abigail Faulkner, who had been attainted by the Court of Oyer and Terminer. But what evidence is there that all the other attainted persons were pardoned? And if they were not pardoned, the statement in the preamble remains unshaken by this attempt to impeach it.[3]

But Dr. Moore goes further, and declares that neither the printed act nor the manuscript copy at Salem "has any provision or provisions 'in favour of' the sufferers or their representatives, 'respecting their Estates.'"

I hardly know how to account for this assertion; it is so directly at variance with what I had supposed every lawyer would frankly admit was the inseparable incident of attainders everywhere throughout the realm and the dominions of England. Would our friend have us believe that no forfeiture and no escheat followed the attainders of 1692? If so, here again I am compelled to confess my ignorance of his authority, and to express my regret that he has passed over the subject so lightly in his paper.

We must not lose sight of the fact that all who suffered the extreme penalty of the law in 1692 were condemned before the passage of the act "setting forth general privileges," by which escheats and forfeitures in cases of felony were abolished, and that this act was subsequently disallowed by the Privy Council because of this very clause which was declared

[1] Vol. ii. p. 61.

[2] Dr. Moore's quotation from Hutchinson respecting the characters of these persons is liable, as separated by him from the context, to be misunderstood. The historian is not comparing them with the whole world, but with their companions. If they were thus, relatively, "the worst characters," they may still have been very decent people, as, in point of fact, I believe they were. See Proc. Mass. Hist. Soc., vol. xxi. p. 88, n. 3.

[3] The "pardon" which Calef refers to, and the "discharge" mentioned by others, were probably one and the same thing. Hutchinson gives us an idea of the blind deference paid to persons in authority, in the romantic incident which he relates of the release of a prisoner by the Governor's lady, who forged a warrant to accomplish her purpose with the prison-keeper. The story, which seems to be true, justifies the inference that the Governor was supposed to have unlimited authority in the matter of discharging prisoners. Hence, too, the peculiarity of the final jail-delivery on which Hutchinson briefly comments.

by them to be "repugnant to the laws of England."[1] That act was not made retroactive expressly or by necessary implication.

Now, whatever may have been the practice in this Province after the passage of this act, and however convincing now appear to us the reasons that may be offered to show that a similar provision in the colonial "Body of Liberties" was operative under the new charter, it is certain that neither in Massachusetts nor at Whitehall did the notion at that time prevail that the "lands and heritages" of the condemned were exempt from forfeiture and escheat. Moreover, the act clearly contains nothing to prevent the "corruption of blood."

For my own part, I know of no reason for doubting that the attainders following the judgments pronounced against the persons convicted of witchcraft by the Court of Oyer and Terminer not only involved the forfeiture of all lands and other corporeal hereditaments, "for a year and a day, and waste," but that the real estate of the condemned escheated to the king, who, by the tenure of "free and common socage," as of the royal "Manor of East Greenwich," under which all lands in Massachusetts were held, was the immediate lord. This escheat, moreover, though not strictly a forfeiture, was an absolute sequestration of the realty; and, notwithstanding no actual entry may have been made, upon information or otherwise, and no record of "office found"[2] remains, the estates of those who were attainted were, according to the maxim *Nullum tempus occurrit regi*, forever liable to seizure unless a pardon specially restoring the escheated lands should be granted by the crown, or unless the attainder should be removed by an act of the legislature.

Until the enactment of a proper bill of reversal and restitution, however, the blood of the condemned remained "corrupted," so that neither could he be the vehicle for the transmission of property by descent, nor his posterity take from him by inheritance. A pardon, whatever effect it might have had when granted with apt words and a special design

[1] See note to 1692-93, chap. 11 in vol. i. of Province Laws; also Proc. Mass. Hist. Soc., vol. xx. p. 282, note †.

[2] "Where one is actually attainted, and his blood corrupted, and dies seized in fee, his lands cannot descend, but vest in the king without office found." Dane's Abr.; and see 4 Coke's Rep. [58 *a*].

to waive the escheat, could never avail to restore the forfeiture, or purge the blood of its "corruption."

Citations might be multiplied almost infinitely to show the utter insufficiency of a pardon from the king himself to avoid the consequences of attainder. In the language of Blackstone, which Dr. Moore has quoted, "Nothing can restore or purify the blood when once corrupted," even if a pardon be allowed "after attainder, but the high and transcendent power of Parliament."[1] In this Province, of course, the General Court performed this parliamentary function.

Nor did attainders operate solely to the injury of the condemned and his kindred; for as they invariably had relation "to the time of the fact committed," they avoided all subsequent conveyances and incumbrances of real estate by the condemned; and as some of the diabolical practices alleged in the indictments in 1692 dated back many years, the attainders may have subverted the intervening titles of creditors and innocent purchasers.

That these direful effects were understood and dreaded at that time is shown by the horrible nature of Giles Corey's punishment, who, to avoid the lasting and ruinous consequences of attainder, bravely accepted the awful alternative of the *peine forte et dure*.

If, then, I am right in my opinion that the act in question was necessary (and it is not material whether this necessity really existed or not, if the legislature believed it did) to secure immunity from this terrible ban, the "quietus," as Dr. Moore calls it, which the last paragraph of the act contains (the protection of the executive officers concerned in the prosecutions of the alleged witches), is by no means "the most important provision of the whole act." Nor is that exemption from lawsuits, even, to be condemned as inequitable, if the purposes of the act in other respects were fully carried out, since the grant of full compensation to the sufferers would unquestionably be good ground for denying them any further remedy.

I dismiss the topic of the declaration in the preamble with a brief recapitulation, to show more explicitly the complete antagonism between Dr. Moore's views and mine on this head.

[1] Commentaries, bk. iv. chap. xxxi. § 4. See also *ibid.*, chap. xxvi. p. 337, and chap. xxix. p. 376.

While he detects in this declaration a falsehood and a badge of fraud, to me it offers strong internal evidence of genuineness, because the truth it expresses imparts to the act a *raison d'être* and the color of necessity. He thinks that the "report" was the only legislative proceeding "in favour of" the "Estates" of the sufferers, while to me the report and the vote accepting it seem intended only to repair damage to the person and to chattels, and leave the "Estates" to be restored by the operation of a formal act, such as the one before us.

While in this train of thought, and before proceeding to the consideration of details less relevant, I turn to a paragraph of Dr. Moore's which I wish could not be construed even into the semblance of unkindness. I cannot think my frank and genial friend would for a moment intentionally indulge in unwarrantably severe reflections upon the character or conduct of the dead, to whom, in the performance of the sacred duty of critic or historiographer, he must perforce assign a place in his *tableaux* of the past. I am therefore willing to believe that it is my own perversity that detects a shade of injustice in his expressed opinion of the main purpose of "the wretched remnants" — of the families which were broken and scattered by the witch persecutions — in applying to the General Court. Yet, nevertheless, his words affect me painfully. He surely is conscious of the fealty he owes, as a man and a scholar, to that imperative law which forbids the ascription of unworthy motives without clear and convincing evidence. Am I wrong when I believe that the touching words of those petitioners were sincere, and that the declaration of the children of Rebecca Nurse, that "the principal thing wherein we desire restitution" is "the removing . . . the reproach" which the name of their dear mother "and the name of her posterity lyes under," only echoed the general sentiment of the petitioners? If I err herein, it is because I do not repudiate the charitable rule, and discredit their own professions. But where would be my warrant for repudiating that rule?

Why must I read between the lines something that shall falsify the professions of Francis Faulkner and nineteen others, who join in a petition to the General Court "that something may be publickly done to take off infamy from the names and

memory of those who have suffered, . . . that none of their surviving relations, nor their posterity, may suffer reproach upon that account"? Why should I question the sincerity of the declaration of the Corey family that "that which is grieuous to us is that we are not only impoverished but also reproached, *and so may be to all generations, and that wrongfully . . . unless something be done for the removal thereof*," — or of the prayer of Isaac Estey and twenty-one others, that an act be passed to "*restore the reputations to the posterity of the sufferers*"?

When, in 1710, Estey said "this world can never make me any compensation," for the loss of his wife; and the poor man, Ephraim Wildes, declared that though his loss was £20 he was willing to take £14, "*considering our names may be repaired;*" and William Hobbs offered to reduce his claim from £40 to £10, for a like consideration; and Mary Bradbury's sons ask that the name of their good mother may be inserted in "*the bill for taking off the attainder;*"[1] and Charles Burroughs, Philip English, John Tarbell, Abraham Foster, Elizabeth Johnson, Thomas Carrier, Samuel Wardwell, and John and Joseph Parker make the same request; and the Rev. Thomas Barnard and eleven other ministers join in proposing to the General Court to consider whether something may not and ought not to be publicly done "to clear the good name and reputation" of some of the sufferers, — was *money* all they were after? Was Rebekah Fowle *feigning* when she urged that the business of compensation be quickly disposed of, because "every discourse on this melancholy subject doth but give a fresh wound to my bleeding heart"? I thank God that my respect for human nature, and my regard for what I consider the true historical method, alike forbid that I should believe it!

The traditions preserved by the posterity of these good

[1] As for the compensation, what can be more unselfish than the request of the Bradburys to the committee? — "We doubt not but some others might suffer more in their estates; and it seems very just and reasonable that restitution be, in some measure, made as far as the case will bear; and, therefore, we would not discourage so just and good a design by any excessive demands, *but rather comply with anything which your Honers shall think meet to allow*," etc. This was the general feeling, though there was some contention in the Burroughs family about the right of the widow to the lion's share, she having transferred all Burroughs's effects to another husband.

people and by the descendants of their neighbors corroborate the testimony of their faded, perhaps tear-stained, petitions still in the public files. Even in the pages of contemporary history, their pecuniary losses make an inconspicuous figure in the list of wrongs. The sums finally awarded to them seem miserably small and inadequate; but there is evidence directly tending to show that even this pittance they themselves proposed, or cheerfully agreed to, as a full reparation of personal damages, in consideration of the additional favor of a reversal of the attainders.

It seems to me impossible, after carefully pondering the whole story, not to feel that, more than the loss of lands and goods, the sufferers and survivors felt the loss of fellowship. Neighbors and kindred contemned them. Like the fruit of man's first disobedience, the curse laid upon them descended to their innocent posterity; and in some instances the sentence of ecclesiastical excommunication had filled their cup of woe by formally consigning the revered parent or the tenderly loved child, husband, or wife to sure and eternal damnation. These circumstances were likely to impress the survivors with a sense of infamy and utter desolation, to which any material loss were but as the stolen purse to Othello.

It is pleasant to know how fully the prayers of these petitioners for a restoration of their good name have been answered. Their descendants to-day, filling their full share of places of honor and trust,

"Hear no reproachful whispers on the wind,"

from the graves of their ancestors. The instigators of, and principal actors in, their persecution have sunk into comparative oblivion, or are remembered with aversion and contempt. On the other hand, almost the only sweet episodes in our memory of men and manners at that early day are to be found in the accounts which have been transmitted to us of the fortitude and composure with which those victims of irresponsible power endured the insane atrocities inflicted upon them, and the glimpses we there obtain of the mutual affection between the sufferers and those near and dear to them. The tender offices which their friends and kindred performed for them while living, and the efforts to remove the stigma of condemnation after they were dead, are as noble and disinterested

deeds as have ever been commemorated in history or in song. Nothing else has withstood the ravages of time that better serves to show the susceptibility of the human heart to tenderest emotions, even amidst prevailing malevolence and superstition, and nowhere else can we perceive a ray of solace or of beauty in the painful details of that picture of early provincial life.

Dr. Moore finds support for his theory of the spuriousness of this copy in its "long concealment," which is strengthened by the fact that it has no known duplicate, — "one solitary printed copy." I confess I fail to see in these circumstances, taken separately or together, a foundation for a reasonable doubt; nor do I believe that he will insist that there is any recognized rule that requires the determination of the authenticity of prints supposed to be "unique," to be postponed until all doubt is removed by the discovery of other copies, or until the individual history of each shall have been traced, step by step, to the first possessor.

I venture to say that in his unrivalled collection of the Laws, and the Journals of the House of Representatives, of Massachusetts, our friend here must have pages — yes, and volumes even — that cannot be duplicated, which I am sure are, in his estimation, not less valuable on that account, either to the bibliophilist, the lawyer, or the historian. Whether other copies of this impression may hereafter appear, or not, is of no consequence when we consider that the printers might, with little extra labor, have pulled a score or a hundred sheets while the form was in the press. And who shall say that they did not?

Neither, since the antiquity of the paper is conceded, and it clearly appears to be of the typography of Bartholomew Green, do I think it material to trace its history in all the obscure past. It may be of interest, however, to know that this particular copy was purchased at the sale of the collection of the late J. K. Wiggin, and that it bears the autograph signature of Nathaniel Lambert, who in 1805 — when he appears to have signed it — was the ward, as well as the office-assistant of Ichabod Tucker, Clerk of the Courts and a successor of Stephen Sewall. This takes the paper back nearly half the period of its existence, through channels that apparently lead to no suspicious source. We may well question if it is possible to give as satisfactory an account of any of the numerous

genuine early prints which every now and then are emerging from obscurity into the glare of great libraries or the more subdued light of collectors' cabinets.

The argument founded on the absence of the bill and engrossment from the rolls or archives becomes of still inferior force when we consider the numerous casualties, by fire and revolution, which all the papers, of equal age, now remaining in the Secretary's office, have escaped. The engrossments of three hundred and sixty-seven public acts and of seven private acts have disappeared from that office by some means or other, together with probably a still larger number of original bills. Now, if we are to understand Dr. Moore's quotation of a paragraph from a message of the House of Representatives to Governor Hutchinson in 1770 as offered in support of the proposition that the existence of every act is to be finally tested by comparison with the engrossment, I think I shall find no difficulty in getting his proposition excluded, on the ground that it is practically untenable. And if the quotation is not made for this purpose, I cannot see the relevancy or the force of the argument he would base upon it. It is true that all acts of the General Court were required by the charter to be under the Province seal; and that they were engrossed on parchment, and signed by the executive, is an undeniable fact; but to conclude, hence, that, if the parchment is lost or destroyed, the act is a nullity, would be asserting a novel doctrine and indicating a new method of repeal, the legality of which our friend should not allow to rest unsupported by unequivocal and overwhelming authority. Such a proposition, if established, would overturn the entire system of the common law, which is based upon lost statutes whose purport has been handed down, by tradition, in the courts.

Now, coming to the record evidence, I begin with the remark that it is fortunate that the necessities of the case do not require me to explain all the obscurities of the proceedings of the General Court relating to the passage of this act. There being no Journal of the House of Representatives in existence for that period, and the files being imperfect, we are obliged to rely mainly upon the journals of the Governor and Council, commonly known as the General Court Records, for our knowledge of the doings of either branch. The originals of these journals were consumed, with the Court House, in 1747; and

the duplicate copies, subsequently made, do not exactly agree with each other in all respects, and may fail to contain some important passages originally entered. I give this as a possible explanation of the absence of any express mention of the Governor's approval of certain acts in 1711, though, as to the act we are considering, I still adhere to the conjecture I have already expressed. The anachronism which Dr. Moore notices in my statement that the act "had passed the several stages of legislation," will disappear if the time referred to by me is understood to be the time of the Secretary's "making up his records." I admit that my statement is obscure, and that my friend might very naturally have supposed that I was under the false impression that the passage to enactment preceded the adoption of the report. Such, however, is not the case; and I fully concur in his criticism concerning the unsatisfactoriness of the record.

My statement was a deduction from my previous showing from the records, which I believe was full and accurate; so there was, and is, no danger of being misled by it one way or the other; nor, since Dr. Moore has so fully supplemented my work by his critical examination of the record entries, in his rejoinder, need we again go over the ground.

One suggestion here, however, will perhaps help to reconcile any apparent discrepancy between the report and the act, and account for the twofold proceedings.[1] The act began in the Council, where the tradition concerning the exclusive right of the Representatives to originate money-bills may have operated to the rejection of any clause requiring an appropriation. When the bill was returned from the House, it was not amended, or replaced by a new draught, but it was accompanied by an order, proposed in the House, providing for the compensation asked for, as well as for the appointment of a joint committee to ascertain the names of the persons who were to receive it. If, as is probable, the Representatives felt this to be the best course to pursue under the circumstances, the Council certainly could not object to it, since it left their bill intact, except in regard to one feature in which the co-operation of the House was expected as being necessary to perfect the bill.

[1] It may at the same time furnish a satisfactory answer to Dr. Moore's question, "Why was it that an act was not drawn embracing all the recommendations of the committee?" etc. Proc. Mass. Hist. Soc., vol. xxi. p. 87.

The declaration of the committee that the claims of the petitioners were "moderated," or abated, cannot be refuted by comparing the report with the claims on file, until we have ascertained that the latter were the first and only demands presented; which the very declaration renders doubtful, to say the least.

Again, the mystery of the omission from the act, of the names of seven of the persons condemned is not cleared up — at least so as to throw the responsibility upon the legislature — by the letter of Nehemiah Jewett to Major Sewall, which Dr. Moore has given us in full; because that letter bears the following indorsement, in Sewall's handwriting, "Mr Jewets note ab° y° psons condemned *and not returned to ye Gener*^{ll} *Court.*" This important memorandum, which is not printed by Woodward, leaves the question still open as to whether or not Jewett had any good reason for his supposition. Seeing that it was thus indecisive, I did not deem it worth while to comment upon it in my reply to Dr. Moore's Notes.

On one point, however, Dr. Moore has clearly convicted me of the very fault that I had animadverted upon in the conduct of the committee. I charged them with carelessness in not reporting the Christian name of Goodwife Corey. This is inexcusable, and I thank my friend for the correction. But though the illustration fails in this instance, the charge is equally well sustained by their omission to report the name of Thomas Rich, — Goodwife Corey's son by a former marriage. On referring to my notes, I find that this was the only omission I had intended to point out; but in the hurry of composition I was in this particular led into a misinterpretation of my brief minutes, probably by noticing that the Christian name of the mother did not appear either in the act or in the committee's list sent by Jewett to Sewall.[1] This mistake would not have occurred if I had made the slightest comparison of my notes with the report accepted by the legislature.

Having thus pondered the evidence which the act itself affords, and examined into the precedent and contemporaneous circumstances which the records disclose, let us resume the consideration of the extraneous evidence which Dr. Moore adduces to confirm his assertion that no such act was passed.

[1] Jewett, who acted as chairman of the committee, was probably responsible for the omission in the act, as it is very likely that he drew the bill.

We are pointed to the fact, as significant, that the Rev. Israel Loring, in 1737, and Governor Belcher, in 1740, appear to have had no knowledge of any such act. But this, if it proves anything, proves too much. It shows that these worthies were as ignorant that the sufferers had received compensation — which nobody disputes — as that the attainders had been reversed. If the force of the blow demolishes the one, it recoils with equal force upon the other; and either both the act and report are not affected by it, or they fall together.

It is indeed unaccountable that legislative proceedings of such importance should so soon pass out of memory; but the fact is, nevertheless, undeniable. And an instance even more striking than this is the utter failure of everybody concerned, — the committee, the several assemblies, and the petitioners themselves, — from 1708 to 1711, to take any notice of the act to reverse attainders, passed in 1703, which was only about five years before the proceedings were instituted that resulted in the passage of the present act.[1] Can our ingenious friend devise an explanation of this remarkable oversight that will not apply with equal or increased force to the forgetfulness manifested a generation later? This is one of the mysteries which I confess myself incompetent to solve. I feel reasonably sure, however, that the committee of 1750 *did* discover the facts relative to the compensation, and the reversal of the attainder. Hence it was — and not to justify a report that was never made, as my friend rashly concludes — that I expressed the opinion that it was their duty to report against reconsidering the claim: a duty from which they ought not to have been deterred by any considerations of pity for the "mean, low, and abject circumstances" to which the unfortunate descendants of the condemned had been reduced, and which — to his credit, be it said — moved good Parson Loring to sympathy and to efforts in their behalf.

If, after our friend shall have reviewed the subject in the aspect in which I now leave it, he shall not agree with me that the presumption that the act was regularly passed prevails over all the doubts and difficulties which, except for his shrewd insight and large knowledge, would perhaps never have obscured its title to recognition, I shall be disappointed;

[1] See Dr. Moore's comment on this, in his first note in Proc. Mass. Hist. Soc., vol. xxi. p. 88.

but in such case there is no one, I am sure, more likely than he to discover some further evidence so decisive that this shall no longer remain an exception to our uniform agreement on historical questions.

Meanwhile the inscription which my scholarly friend has suggested as proper to be placed on the cabinet wherein the "remains" of the act are deposited, must be for the present declined. As custodian of the relic, I feel that I ought to be better assured that it never had vitality before I entomb it under an epitaph.

If any inscription were necessary, I think the following would be more appropriate: —

Stat mole sua; nullus esse potest ambigendi locus.

This fragile leaf has survived five generations of men, to attest to the candid descendants of honorable ancestors, many of whose good deeds the world has forgotten — while the errors which they shared with their contemporaries have been loudly proclaimed — a singular instance of their justice and generosity, in that, while they were the first of all people to escape the thraldom of a superstition to which in Christian Europe alone it is estimated that more than nine millions of innocent human beings have been sacrificed, they were also the first to make pecuniary reparation to the descendants of those who had been ignorantly condemned for witchcraft; and then BY THIS INSTRUMENT they not only restored the forfeited estates of the victims, but rescued their names and the names of their posterity from perpetual infamy: AN ACT OF LEGISLATION, WITHOUT PRECEDENT OR PARALLEL, and which, though hitherto scarcely noticed, will grow more lustrous with the lapse of time.

"*So shines a good deed in a naughty world.*"